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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,085	06/25/2003	Andrew J. Berry	800748	1084
23372	7590	12/16/2004	EXAMINER	
TAYLOR RUSSELL & RUSSELL, P.C. 4807 SPICEWOOD SPRINGS ROAD BUILDING TWO SUITE 250 AUSTIN, TX 78759			FARAH, AHMED M	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/604,085	BERRY ET AL.
	Examiner	Art Unit
	Ahmed M Farah	3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date July 3, 2003.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Eckhouse U.S. Patent No. 5,720,772.

As to claims 1-3, 14, and 15, Eckhouse discloses a dermatological treatment apparatus comprising:

a treatment head 12 for generating intense pulses of incoherent (non-laser) light;

a controller/computer system for controlling the operation of the treatment device in accordance with the treatment parameters (col. 16, lines 16-24); and

a detector means 22 associated with the treatment head for detecting a condition of an area of skin under treatment as presently claimed.

As to claims 4-7, 9, and 12, the detector system 22 is an optical sensor, which monitors infrared light that is

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backscattered from the tissue being treated to measure the temperature of the surface of the skin.

As to claims 8 and 13, the detector system, with the aid of optical and neutral density filters, measures a backscattered portion of the treatment light or an infrared radiation emitted by the skin being treated. Therefore, when measuring only the infrared portion of the backscattered light, the detector system has a low sensitivity to the pulses of the treatment light, as presently claimed. And, As to claim 13, the detector also is adapted to measure the backscattered pulses of the treatment light as presently claimed.

As to claims 10-12, Eckhouse teaches that the detector system measures the optical properties of the skin prior to the treatment (col. 6, lines 41-44). However, although he does not particularly teach that the color of the skin is being determined, in this Office Action, the color of skin is considered as being an optical property of the skin. As to claims 11 and 12, Eckhouse further teaches that a wide spectral range is used to measure the optical parameters of the skin (see col. 5, lines 24-25 and col. 6, lines 44-46). Hence, Eckhouse meets the recited limitations.

As to claim 24, although Eckhouse does not particularly teach the temperature of the treatment device prior to the

treatment, at least portions of the device are inherently in room temperature. It further known that the skin temperature of healthy person is higher than the room temperature. Hence, the examiner's position is that at least certain parts of Eckhouse's device have temperatures that are below the temperature of the skin prior to the commencement of treatment.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhouse in view of Ghaffari U.S. Patent No. 5,344,418 and Muller U.S. Patent No. 5,830,208.

Although Eckhouse, described above, teaches the use of a coolant to reduce the temperature of the skin surface (see Fig. 13), he does not use a stream of cold air passing over skin area being treated as presently claimed. Furthermore, as to claims 19-

23, he fails to teach the components of the cooling system as recited.

However, Ghaffari teaches an alternative skin treatment device comprising a cooling system in which a stream of cold air passes over an area of skin being treated. Ghaffari further teaches the cooling device includes a sapphire lens that is intended to be brought into contact with the skin being treated. As to claim 23, Muller also teaches an alternative skin treatment device in which a peltier device is used to cool a surface area of the skin being treated. Therefore, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify Eckhouse in view Ghaffari or Muller and use a cooling system comprising a cooling fluid or a peltier device as an equivalent alternative cooling system to lower the temperature of the skin surface under treatment so as to prevent and/or minimize damage to the skin tissue.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the following references:

U.S. Patent No. 5,814,040 to Nelson et al; U.S. Patent No. 5,964,749 to Echkhause et al; and U.S. Patent No. 6,104,959 to

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Spertell, teach skin treatment devices comprising: a light source, control/monitoring device, and a skin cooling system, respectively.

U.S. Patent No. 5,207,670 to Sinofsky discloses a tissue treatment device and methods of use, the device comprising a reflectance monitor for measuring a light reflected from the surface of the skin being treated.

U.S. Patent No. 5,860,967 to Zavislan et al. teaches a dermatological treatment device comprising a visualization means for viewing the surface of the skin under treatment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M Farah whose telephone number is (703) 305-5787. The examiner can normally be reached on Mon-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Farah,
Primary Patent Examiner, AU: 3739


December 11, 2004.